

MEMBERS PRESENT: Chairman Stewart  
Vice Chairman Sader  
Mr. Thompson  
Ms. Foley  
Mr. Beyer  
Mr. Price  
Mr. Chaney  
Mr. Malone  
Mrs. Cafferata  
Ms. Ham  
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Norm Herring, State Public Defender's Office  
Brooke Nielsen, Attorney General's Office -  
Criminal  
Bob Manley, Attorney General's Office - Criminal  
Butch Lynn, Washoe Motor Car Dealers  
Association  
Dick Van, Reno Toyota  
Daryl E. Capurro, Nevada Franchised Auto  
Dealers Association  
Wm. Ben Scott  
Bob Sullivan, Carson River Basin Council  
of Governments  
Bryce Wilson, Nevada Association of Counties

Chairman Stewart called the meeting to order at 8:05 a.m. He stated the Committee would hear AB 76 first.

AB 76: Provides certain restrictions on creation of office of county public defender.

First to testify in favor of this bill was Mr. Norm Herring, State Public Defender. Mr. Herring began his testimony by outlining the history of the Public Defender. He noted that the Office is charged with a number of responsibilities, most predominantly with representing those who are charged with criminal acts and are determined to be indigent. He said that Washoe and Clark Counties, by statutory provision, are required to have their own Public Defender's Office. Elko, in July 1979, opted for their own Public Defender's Office.

Mr. Herring said that as far as he knew, the State Public Defender's was the only State agency that is required to directly assess costs to the counties and collect them on its own behalf. He noted he had just prepared a new biennial budget, which includes all 14 counties which his office currently represents. He said this budget will have a contribution by the counties

of circa \$399,000; this is approximately 56% of the State Public Defender's budget. The rest of the appropriation is paid from the State General Fund.

Mr. Herring described the many steps required to devise the State Public Defender's budget, which will be presented to the money committees of the Legislature during this session. He pointed out, however, that even if the budget is approved, and the office expected to operate under the funding authorized, any county can withdraw from the State Public Defender at any time. This could have significant impact upon the budget, as well as upon the efficiency and logistics of the office.

Mr. Herring then referred to EXHIBIT A, which consists of pages 16 through 20 of a management study report done by the A B T Associates of Cambridge, Massachusetts in 1980 on the Public Defender's Office. He noted that there were a number of changes made in the Office under his administration. He also noted that, starting on page 18 of the study, there are several recommendations made. He stated that page 20 details the impetus for AB 76, which is to commit the counties to a 2 year budget for the State Public Defender. This will enable the Public Defender to better plan for this 2 year period. The bill also gives the counties the opportunity, at the end of the 2 year period, to file notice with the State Public Defender's Office that they intend to withdraw from the Office.

Mr. Herring said that, as far as he knew, all of the counties are currently pleased with the services provided by his office, and he would hope they would be committed to the budget for the 2 year period. That is what he is asking for in this bill. He added that he has been in contact with most of the counties, and that they are aware of their budgetary responsibilities for this year.

Mr. Herring then noted that Carson City is the major contributor to the budget: \$91,000. For this money, Carson City receives: 2 full time attorneys; an appellate deputy, who handles all the appeals out of Carson City, which are of considerable number; and a full time prison deputy, who handles all the prison cases, which are numerous and concern both prosecutions and habeas corpus actions.

Mr. Beyer asked about the timing of payments by the counties to the Public Defender's budget. Mr. Herring replied that the statutory provision requires the Office bill them by the middle of May each year, and the counties are required to submit payment as of July 1. Mr. Herring said, however, that several counties, because of the large contributions they make, pay on a quarterly basis, which is agreeable to both sides.

Next Mr. Beyer asked what provision, if any, was in the bill for a county withdrawing from the State office, and creating their own halfway through the 2 year period, yet continuing their

payments to the State office until the end of the 2 year period. Mr. Herring replied that this bill, as currently written, would not allow this; he added that he doubted this would occur, since all the counties are so fiscally strapped. Mr. Beyer noted, however, that perhaps the counties should have this option; they should not be locked into the State Public Defender.

Mr. Banner asked how long the State Public Defender's Office has been in operation. Mr. Herring said since 1971. In reply to another question from Mr. Banner, Mr. Herring said he did not know whether this was before or after Clark County formed its Public Defender's Office. Mr. Herring added that the State Public Defender's Office was formed in order to help those counties which could not afford to hire private counsel for this purpose, which is what would be required in some of the smaller counties.

Mr. Herring then stated that he felt it to be of significance that none of the counties had come forth to oppose this legislation.

Mr. Price then pointed out that there is no contractual agreement between the Public Defender and the counties, and wondered what guarantees the counties have that the Public Defender's Office will provide the type of service the counties expect. He also asked if the counties had any input into determining how much they would pay the Public Defender. Mr. Herring replied that he prepares a tentative budget, which he then submits to the budget committees in the Legislature. At this point, the individual counties have an idea of the amounts they will be required to pay. This tentative budget bill draft notes the percentage of the case load of the Public Defender for which each county is responsible, as well as the projected costs to the county. As far as protection for the counties that the Public Defender will provide the services expected, Mr. Herring said this would have to come, in part, from faith that the executive branch of the government will run an effective agency. Additionally, the judiciary has the responsibility--and readily does--monitor the Public Defender's activities. Mr. Herring proudly added that there have been no complaints from the judiciary during his term as Public Defender.

Mr. Stewart asked why the Public Defender didn't enter into a contractual relationship with the counties using this office. Mr. Herring said there was no problem doing this, if this is what the Committee wanted; a number of jurisdictions do it this way. He really didn't see that it made much difference which way the budgetary problem was handled.

To Mrs. Cafferata's question as to why Elko withdrew from the Office, Mr. Herring replied it was an attempt by the County Commissioners to save money. He added that the State Bar and the Indian Legal Services have complained about the current arrangement in Elko, and they and the District and County Attorneys' Offices have asked the State Public Defender to return to Elko. This cannot occur, however, until the

County Commissioners decide to vote the money to do this.

Mr. Stewart asked how much the contribution from the General Fund is. Mr. Herring said that he expects it to be \$266,403. He said that last year he collected \$277,155 from the various counties, and this year he expects to collect \$399,114. He added that this is in direct proportion to the increase in crime reporting statistics across the state; there is a need for more people because there are more cases to defend.

In reply to another question from Mr. Stewart, Mr. Herring said his office represents all individuals on post-conviction appeals, out of either Clark or Washoe or Elko County, pursuant to statutory provision; individuals presenting habeas corpus petitions to the Carson City courts; occasionally, the Nevada Supreme Court will ask the Public Defender to represent an individual upon a direct appeal or a direct petition for a writ of habeas corpus presented in the Nevada Supreme Court; individuals appearing before the Parole Board in Carson City; and those appearing before the twice annual meeting of the Pardons Board in Carson City.

Mr. Stewart asked if the Public Defender required any showing of indigency. Mr. Herring replied this determination was made at the justice court level, not by the Public Defender's Office. The Justice of the Peace is required, pursuant to NRS Chapter 177, to get a written statement from the individual and an affidavit of indigency. He added that there are numerous occasions where the Public Defender has reviewed an individual's financial status, reported back to the court that it was not believed the individual was eligible for State Public Defender's services, and been relieved as counsel. Mr. Stewart asked if there was similar determination made when an individual appeared before the Parole or Pardons Board. Mr. Herring replied that his office made this determination based on financial status statements and/or documents, etc.; however, he noted his office did not have a financial investigator to check into this fully.

In further reply to Mr. Stewart, Mr. Herring explained that any time an individual is facing the possibility of incarceration (i.e., any loss of liberty), the U.S. Supreme Court has indicated that individual is entitled to counsel.

Mr. Herring said he had branch offices in Winnemucca and Ely, and expected to open one in Tonopah. He noted the Defender in Ely is a contract deputy, however he is responsible for all the Public Defender's services to White Pine, Eureka, and Lincoln Counties. He is paid \$24,000 because he is the only attorney in Eastern Nevada. He currently has private practice in addition to his Public Defender's responsibilities, however under the current budget he will become a fulltime deputy. This is a yearly salary, not given on a case-by-case basis.

Mr. Sader asked if Mr. Herring anticipated changes should the MX missile project come to Nevada. Mr. Herring replied that he has reviewed the environmental impact report on rural Nevada,

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and that the impact depended on whether the main operating base would be located in Ely or in Coyote Springs; if the latter, the major impact will fall on Clark County, for which Mr. Herring's office is not responsible. He added that one question which has not been answered by the environmental impact report is whether, in fact, during the construction phase of the MX, on the construction sites and later the operating bases, crimes committed on those facilities are to be federal jurisdiction. Again, the latter case will have no impact upon Mr. Herring's office. If it should be State jurisdiction rather than federal, however, there will be a substantial impact. The Air Force has been advised that this question was not addressed in the environmental impact study and should have been.

Mr. Herring told Mr. Stewart that the fees collected from the three counties were almost in direct proportion (within \$1,000) to the salary paid the contract attorney.

Mr. Beyer asked why there was funding from the General Fund, if the Public Defender only provided service to 14 counties. Mr. Herring said his office also provided services on a state-wide basis; i.e., once an individual gets into the prison system, they become a State problem, and the Public Defender's representation of these individuals, no matter which county they are from, becomes a General Fund cost. Mr. Herring added that one of the recommendations of the management study report was that Public Defender's Offices across the country should receive the majority of their funding from the General Fund, thus becoming truly State funded agencies.

Next to testify on AB 76 was Bob Sullivan, Carson River Basin Council of Governments. He noted that the Council of Governments has a notification process within its system to notify county managers, etc., of bills to be considered. He added that the Judiciary Committee posts its bills well in advance, and thus the counties have known about AB 76 for over a week. He noted that in spite of this he has not heard any comments on this bill, either positive or negative. He added that he felt the counties look upon this bill as being reasonable, given the aspect that the Public Defender's Office is on a 2 year cycle for funding.

There was no further testimony on this bill, so Chairman Stewart declared the hearing closed.

AB 83: Raises threshold amount over which certain statutory liens become secondary.

First for testify on this bill was Daryl Capurro, representing the Nevada Franchised Auto Dealers Association. Mr. Capurro explained that the original law covering lien satisfaction was passed in 1943, and he is not sure if the current \$300 provision in the law has ever been amended; it has not been amended for at least 12 years.

Last session, the Legislature raised the dollar amount going to small claims and municipal courts from \$300 to \$750. This bill is a request that the lien amount be raised the same amount.

Mr. Capurro noted that the bill drafter added the words "combination of" but he did not feel this altered the bill in any way, since the current law refers to lien or liens.

Mr. Capurro then explained that in order to satisfy a lien involved in mechanical repairs, etc. there is a rather extensive requirement to post notice, to comply with NRS 108.310, etc. which, if not followed, would render the lien process null and void. Thus there is protection with regard to notice to the individual, both at the time the work is commenced and upon completion of the work and non-payment.

Mr. Capurro added that costs to repairmen have gone up substantially and the \$300 figure is no longer appropriate.

Mr. Stewart asked if the unpaid bill was \$300 or less, then the repairman could keep the car, on the basis of a lien for his work, until the bill was paid. Mr. Capurro replied there was some question of this. He cited a case in Clark County District Court wherein the judge ruled this section of the law was unconstitutional. This case has not come up since, nor was it appealed. He stated that generally, however, this is what the bill implies: you keep the car until paid.

Mr. Stewart then asked what the significance was if the car were subject to a loan. Mr. Capurro said he believed the wording "subject of a secured transaction" to mean a secured agreement with a bank. He did not know if this signified there was no limit if the vehicle was not the subject of a secured transaction or a loan. He said that in most instances, one is dealing with a vehicle that is under a secured agreement of some type.

Mr. Stewart said that the way he understood the statute, in the past if the repairs were \$300 or less, you could have a lien on it, you could keep the car until you were paid, but you could not sell it and wipe out the secured loan; you could sell it and pay off the loan, because this lien was prior to the garage's. This bill would up this amount to \$750.

Ms. Ham asked if the reason for the addition of the words "combination of" could be explained. No one could explain it. It was not clear if this wording would cause problems in lines 4 and 5 of the bill, it did not appear to affect line 3. Ms. Foley requested this be checked into, and Mr. Capurro said he would discuss it with the bill drafters.

Mr. Capurro said the current limited amount also creates a problem for the consumer, not just the repairman. This is because the repairman currently feels compelled to request a substantial downpayment or some form of guaranteed payment prior to undertaking

any of the repairs. Thus it has a dampening effect upon the consumer and the garageman, whether it be for the repair of airplanes or automobiles.

Mr. Stewart explained that this bill dealt with the relationship between the repairman and the holder of the original loan. This bill does not deal with the relationship between the owner of the vehicle and the repairman.

Next to testify on AB 83 was Mr. Butch Lynn, President, Washoe Motor Car Dealers Association. Mr. Lynn attempted to clarify the mechanics of the lien law. If an individual brings in his car and has \$750 worth of work done to it, the repairman can retain the automobile for nonpayment, but he can only collect \$300, the primary lien, before the finance company takes out its prior claim. Beyond the \$300, however, the bill becomes a secondary lien, and the chances for collecting payment lessen.

Mr. Malone then raised the point that this bill covers both automobiles and airplanes, and that \$750 is not much money when one is talking about airplanes.

Mr. Price then reiterated the following: a person has a \$5,000 automobile; he has \$1500 worth of work done to it and then defaults on his payments; under this bill, the repairman can file a lien, which will become the primary lien ahead of the finance company up to \$750; the finance company would then take over from the \$750 up to whatever someone sold the car for, up to the amount of the loan. Beyond that, both the repairman and the loan company would file lawsuits against the person, in an attempt to get the rest of their money. Since once the car is sold, all liens are gone, these final lawsuits would fall under repossession where there is a deficiency. The point is, beyond the amount cited, the secured loan holder has priority.

Mr. Sader then asked if, the way the law is currently interpreted, the repairman has a primary lien at least up to \$300. Mr. Lynn confirmed this to be the case; the repairman does not take secondary status if the amount is over \$300, but only for anything that is over the \$300. Mr. Sader pointed out that this is not what the law actually says.

As there was no further testimony on AB 83, the Chairman declared the public hearing on this bill closed.

Next Chairman Stewart asked if the Committee would like the wording "combination of liens" in AB 83 checked into. The Committee did want it checked, and upon request, Mr. Sader agreed to do this.

Chairman Stewart then asked if the Committee would like to take action on AB 76. Ms. Foley noted that this bill simply makes the counties more responsible fiscally, and that the fact there was no testimony in opposition to this bill was significant.

Ms. Foley moved DO PASS on AB 76, and was seconded by Mr. Sader. Mr. Malone asked for further discussion on the topic. He pointed out that when a county pulls out from the State Public Defender's Office, since a lot of the funding comes from the General Fund, this would be a windfall because he doesn't have to give back these funds to the General Fund. Mr. Stewart noted that the counties pretty much pay for their representation. He added that the withdrawal of a county is disruptive to the Office.

Mrs. Cafferata asked why the Public Defender did not ask the counties their plans, whether or not they want a State Public Defender. She added that it is her impression the Public Defender opens an office whether or not that county wants it; the counties appear to have no say in the matter.

Mr. Stewart said the Committee had notified the Association of Counties, the League of Cities, etc. of the hearing, and apparently, with the exception of Elko, most of the counties have been pleased with the service.

Mr. Price said that while the concept of this bill seems reasonable, he would like to see some provision for a guarantee on the part of the agency providing the service that these services will be satisfactory. He suggested holding off on any action on the bill until this could be checked into.

Chairman Stewart asked Ms. Foley if she had any objection to waiting until circa Wednesday before taking action on the bill. Ms. Foley agreed.

Mr. Beyer stated he could not vote for the bill in its current form, wherein there are no doors left open for the counties. He noted that while he can appreciate the State Public Defender's problem, he feels that the counties should have the option, if they so desire, to pay the State Public Defender what they have agreed to pay him, yet terminate his services and set up their own County Public Defender's Office at the same time. He therefore felt the bill needed some massaging. He also agreed with Mr. Price's comment concerning the need for guarantees of service.

Chairman Stewart then recapped how the Public Defender prepares and processes his budget. He pointed out that all the counties do have an opportunity to discuss the cost of this State service.

Chairman Stewart stated that, given all the questions raised by this bill, he will defer action on it for a couple of weeks to allow for preparation and proposal of amendments.

As there was no further business, Chairman Stewart adjourned the meeting at 9:00 a.m.

Respectfully submitted,

*Pamela B. Sleeper*

Pamela B. Sleeper  
Assembly Attache



4.0 CHANGES AND IMPROVEMENTS UNDER THE HERRING ADMINISTRATION

Even though the Public Defender does suffer from several major problems--inadequate funding, too few regional offices, no appellate unit, and lack of support staff--Mr. Herring and his staff have effected substantial improvements in office organization and casehandling in less than two years. Outlined below are the major changes Mr. Herring has initiated, and the problem areas that still remain.

PERSONNEL

Improvements:

- hired committed, aggressive attorneys
- reduced turnover
- increased morale (through better supervision, more support, improved communication)

Remaining Problems:

- no investigators
- no social service workers
- judges control funds for expert witnesses and investigators

OFFICE AND CASE MANAGEMENT

Improvements:

- instituted accountability procedures for regional offices
- applied for and received LEAA grants for outside training
- developing in-house training (still limited at the present time)
- encouraging support staff to enroll in criminal justice classes and sit-in on court
- boosted morale and productivity by replacing old system of pooling secretarial assistance with new system of assigning secretaries to particular attorneys
- developed research file for motions and briefs
- opened regional offices in Winnemucca and Ely
- looking into the possibility of renting or buying more spacious offices closer to the courthouse in Carson City
- increased percent of cases going to trial
- instituted recordkeeping procedures (for cases, calendaring, travel, etc.)
- designed law school externship program, which will begin in the fall of 1980

Remaining Problems:

- late case entry (especially in juvenile cases)
- judges determine eligibility (insufficient independence from the judiciary)
- inadequate coverage in southern and western parts of the state; expensive and time-consuming travel
- no appellate unit

FUNDING

Improvements:

- designed and instituted recordkeeping procedures that will provide documentation for budget requests
- applied for and was awarded an \$11,000 grant from the Law Enforcement Assistance Administration to open a regional office in Winnemucca
- presently applying to the court for funding for the representation of municipal ordinance violations

Remaining Problems:

- insufficient level of funding (more money is needed for staff positions and additional regional offices; no money is provided to cover the cost for juvenile proceedings, municipal ordinance violations and appeals)
- complicated planning due to biennial funding cycle
- complicated planning due to local county option that allows county commissioners to opt out of the state-wide system at any time in the funding cycle
- dependence on the judiciary for funds for expert witnesses and investigators

Reviewing this outline, we can appreciate that Herring and his colleagues have made significant progress in redesigning and improving the organization and quality of defense services. Our interviews suggested that most of the remaining problems are linked to the lack of funding, rather than poor management policy or staff performance.

## 5.0 RECOMMENDATIONS

The following recommendations are based on the materials provided by the Public Defender (including the relevant sections of the Nevada Revised Statutes; the Nevada State Public Defender 1978-79 Annual Report; the 1979-81 Public Defender Budget; and the 1979-80 caseload figures), and the information gathered during our two days of interviews on site. Some of these recommendations address administrative issues while others concern political and legislative issues. Obviously, implementation of some of these recommendations will be more difficult than others, but each is grounded in the experience of other public defender offices and would, in our judgment, ultimately improve the quality of representation for indigent defendants in the State of Nevada.

### 5.1 Appellate Division

The State Public Defender should consider developing a separate appellate office. Many states, as diverse as Indiana and California, have statewide appellate defender offices funded and operated separately from defender offices working in the lower courts. The benefits of a separate appellate office include the expertise which accrues to attorneys who specialize in appeals; the efficiency resulting from the development of an appellate brief bank which can be continuously updated and refined; and the elimination of the potential for intra-office conflict when a public defender case is appealed.

Because of the added administrative costs of setting up an entirely separate appellate office, a distinct appellate division might be initially developed within the State Public Defender's Office. However, if it is part of the same office as the trial court division, the appellate division should be as functionally separate as possible--using lawyers and support staff who do not participate in trial court activities. Although such a division is less optimal than a separate appellate defender office, it would represent a significant improvement over the current method of handling appeals in the Nevada Public Defender Office. As detailed in section 4.3 of the 1976 National Study Commission of the National Legal Aid and Defender Association:

The appellate and post-conviction functions should be independent of the trial function in order to accomplish free and unrestricted review of trial court proceedings.

Where the appellate office is part of a defender system which includes both trials and appeals, the appellate function should be as organizationally independent of the trial function as is feasible.

(a) Counsel on appeal should be different from trial counsel and capable of exercising independent review of the competence and performance of trial counsel.

(b) An appellate defender should not have responsibility for any trial work while in an appellate capacity and should remain in appellate work for a substantial period of time in order to provide continuous representation to a client throughout the appellate process.

Wisconsin presents an example of a statewide public defender system which incorporates both a trial and appellate division in one office. The divisions are kept distinct with no overlap in staff or functions. Further, whenever an appeal from a public defender case has even the potential of raising "adequacy of counsel" issues, the case is assigned out of the office to private counsel.

According to the Nevada State Public Defender, if an appellate division were created in his office its responsibilities would include:

- Direct appeals from the State Public Defender's Office;
- Direct appeals in cases involving indigent appellants who were represented at trial by private counsel or pro se;
- Appeals from counties in which the county public defender is in operation pursuant to Nevada Revised Statutes Chapter 260 and the county defender has been disqualified or when there is an issue regarding adequacy of counsel;
- Habeas corpus appeals and extraordinary writs from inmates of the Nevada Department of Prisons;
- Representation of indigents before the Nevada Board of Pardons Commissioners;
- Post-conviction appeals.

These appellate responsibilities would be pursuant to the duties of the State Public Defender as detailed in NRS 180.060 (4):

In cases of post-conviction proceedings and appeals arising in counties in which the office of public defender has been created . . . , where the matter is to be presented to the supreme court, the state public defender shall prepare and present the case and the public defender of the county shall assist with the state public defender.

From July 1, 1973 to June 30, 1979 the Nevada Public Defender handled 32 appeals. Based on the National Advisory Commission report (1973) the Public Defender Office should not exceed 25 appeals per attorney per year. Thus an adequate appellate division staff would appear to be one full-time attorney, one full-time law clerk and one full-time secretary/word processor.

## 5.2 County Participation

The State Public Defender should work toward a total statewide system encompassing all counties except Clark and Washoe (which are not presently included in the state public defender trial system because of their unique political and economic circumstances). By providing such coverage the statewide public defender can more feasibly ensure quality services in a cost effective manner. Each county which elects to provide its own public defender service reduces the efficiency of the statewide system and duplicates administrative and support services available through the State Public Defender Office.

Because NRS 260.010 and 260.020 allow for counties to opt out of the statewide defender system, it is difficult to develop long term planning regarding staff and support needs. While hiring decisions must be based on the two year budget established at each state legislative session, counties can withdraw at any time, thereby causing an imbalance between revenues and staff. Recently Elko County, for example, decided to withdraw from the statewide public defender system. While there has been some discussion regarding Elko County's return to the system, such decisions make planning and budgeting extremely difficult. In an effort to remedy this problem and still afford the counties the authority to opt out of the statewide system we recommend that the State Public Defender take the following steps:

- Recommend to the legislature that counties be required to commit themselves to the State Public Defender System for at least two years. If this legislation gives the counties the option of establishing their own defender system, that option must be acted upon at the end of each regularly scheduled legislative session. If a county does not provide its own defender services it should be obligated to join the state system until the following regularly scheduled legislative session. This will allow the State Public Defender to plan and provide security to staff for two years.